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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,014	08/26/2003	David Dennis Latham	16210-US	3470

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EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/648,014	<b>Applicant(s)</b> LATHAM ET AL.	
	<b>Examiner</b> Donald Underwood	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04/18/05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/23/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Detailed Action**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2 and 4-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims sets forth that the pin support is removably attached to the load bearing support but no structure is provided for removability rendering the claim incomplete.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1-6, 8-18, 22-24, 28, 29, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apgar et al or Abe et al.

Note elements 62, 64 in Apgar are synonymous with applicant's mast, 86 is a load bearing support and 92 is a pin support. While 86 and 92 in Apgar are welded together and welded pieces can be cut apart, i.e., are removably attached, it would have been obvious to one having ordinary skill in the art to construct these pieces to be bolted instead of welded since both methods are well known and used interchangeably. Bolting would provide easier assembly and reduced costs.

Note elements 23, 42 in Abe are synonymous with applicant's mast, 20 is a load bearing support and 41 is a pin support. While 20 and 41 appear to be welded together it would have been obvious to one having ordinary skill in the art to construct these structures to be bolted instead of welded for the reasons noted above.

Regarding claim 6, the pin support could be made of a casting instead of welded parts. The method of manufacture of a part can not serve as a basis for patentability in an apparatus claim.

Regarding claims 8, 14, 17, 23 and 29, note the pin support in each reference comprises two pin holes and an access hole. The pin would be inserted through the first pin hole, through the access hole and into the second pin hole. These last two steps, i.e., through the access hole and into the second pin hole would meet the claim. Moreover, this assembly step has no bearing in apparatus claims 8, 14 and 17.

Regarding claim 15, Apgar's pin support contains a space like that shown by 108a in applicant's figure 3.

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6. Claims 7, 19, 20, 21, 25, 26, 27, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe, et al. in view of Mandon.

It would have been obvious to use any conventional boom on the frame in Abe including one as taught by Mandon.

Regarding claims 19 and 26, lever 68 in Mandon is shaped like lever 83 in applicant's figure 2.

Regarding claims 21 and 27, Abe's pin support comprises a space which broadly comprises a hole.

7. Claims 8, 14, 17 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Applicant's argument regarding his use of the word hole has been carefully considered and is persuasive in view of statement that a hole is "a hollow space". The areas in the references are hollow spaces.

Applicant's argument regarding his detachable linkage pin support has been carefully considered but is not deemed persuasive since the claim merely calls for the pin support to be removably attached. All structures are separable. Moreover, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. See *Nerwin v. Erlichman*, 168 USPQ 177, 179. Finally, applicants' argument that his arrangement calls for adjustment is not supported by the specification. The specification sets forth providing more than one pin support and interchanging them. See the specification, paragraphs 0003-0005.

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9. Any inquiry concerning this communication should be directed to D. Underwood at telephone number 571-272-6933.

Underwood/vs  
June 29, 2005

*Ronald W. Underwood* 07/13/05  
**RONALD W. UNDERWOOD**  
**PRIMARY EXAMINER**